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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

In the Matter of)

Federal-State Joint Board)
on Universal Service)
_____)

CC Docket No. 96-45

**Comments of Universal Service Alliance on *Recommended*
Decision by the Federal State Joint Board**

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Summary

The Universal Service Alliance (hereafter "USA") is a coalition consisting of diverse organizations and community leaders serving low income, elderly, disabled and rural consumers throughout California.¹ The coalition was formed in response to the California Public Utilities Commission's (CPUC) efforts to introduce competition in local exchange markets without adequate rules to protect and advance universal service. USA has been an active participant in the CPUC's

¹ USA's members include the following organizations and individuals: Access Center, Independent Living Center of Southern California, Alliance for Technology Access, Asian Pacific Environmental Network, California Association of Nonprofits, California Latino Civil Rights Network, California Nevada Community Action Association, Center for Accessible Technology, The Children's Collective, Communications Workers of America, CompuMentor, Computer Access Center, Consumers Coalition of California, Consumers First, Digital Queers, FAME Renaissance, Korean Youth and Community Center, Los Angeles Urban League, MAAC Project, Radio Bilingue, San Diego Urban League, Support Center for Nonprofit Management, World Institute on Disability, W. Elliot Brownlee (History Professor, UC Santa Barbara) J. Craig Fong (Attorney and Community Consultant), Pastor Herrera, Jr. (Director, L.A. County Dept. of Consumer Affairs), Clyde Hostetter (Communications Chair, California AARP State Legislative Committee), Dr. Marvalene Hughes, President, (California State University, Stanislaus), Linda Hamilton Kreiger (Professor, Boalt Law School, UC Berkeley), Hon. Gwen Moore, (former California Assemblywoman and Chair of the Assembly Utilities Committee, President, GeM Communications), Ibrahim Naeem, (Naeem & Associates), Helen Nelson, Consumer Research Foundation, Dr. Barbara O'Connor (Alliance for Public Technology), Lynne Joy Rogers (Business Center, LA Urban League), and Toby Rothschild (Executive Director, Legal Aid Foundation of Long Beach, CA), Donald Vial (former President, California Public Utilities Commission) and Linda J. Wong (CFO, Rebuild LA). Please note that the institutions and organizations following each individual are for identification purposes only.

universal service proceeding and was instrumental in negotiating an agreement with Pacific Bell for the establishment of a Community Technology Foundation as part of the SBC-Pacific Bell merger proceeding. USA is pleased to have the opportunity to present the following comments on the *Joint Board's Recommended Decision*.

I. Preserving and Advancing Universal Service in High Cost Areas.

The Joint Board should be commended for its work in attempting to restructure the disparate revenue flows which currently support basic service in high cost areas. This is a substantial undertaking with enormous consequences for all consumers especially those who live in rural areas. Much, of course, remains to be done including development of a proxy cost model, an appropriate benchmark and methods for collecting and distributing funds to support high cost areas. In completing these tasks, the Commission should strictly adhere to the requirements of section 254 of the Telecommunications Act of 1996 which requires that

“Every telecommunications carrier that provides interstate telecommunications services shall contribute on an equitable and nondiscriminatory basis, to the specific, predictable and sufficient mechanisms established by the Commission to preserve and advance universal service.”²

² Unless otherwise indicated all statutory references are to the Telecommunications Act of 1996.

To this end, the Commission should provide a *realistic* level of funding rather than single-mindedly seeking to arrive at the lowest level of support possible. The Commission obviously should not provide for inflated costs but, at the same time, it must provide sufficient funds for telecommunications carriers to make the investments needed to maintain and modernize their networks. Similarly, the Commission should be realistic (and even conservative) about the revenues carriers can be expected to receive from consumers in high cost areas.

In addition, the Commission must provide a smooth transition to the new funding mechanism. While few can dispute that *in the long term* costs should be determined on a forward-looking, "least-cost, most efficient" basis, all carriers should be allowed *a reasonable period of time* to bring their operations in line with this ideal standard. The Joint Board has recommended such a transition period for "rural telephone companies." Logic and fairness compels that other telecommunications carriers which serve high cost areas should be allowed a reasonable transition period (which may differ from that needed by rural telephone companies) to bring their operations into line with the least-cost, most efficient standard.

If a reasonable transition period is not allowed, these carriers would be required to fund the difference between their actual costs and the proxy cost either

through implicit subsidies (which would violate section 254(d)'s requirement that the funding mechanism be "specific, predictable and sufficient") or shareholder funds (which would violate section 254(d)'s requirement that every carrier contribute "on an equitable and nondiscriminatory basis"). A reasonable transition period would avoid these unlawful results.

The need to provide for a realistic funding level and a reasonable transition period is underscored by the fact that states, too, are restructuring their universal service programs. California, for example, recently adopted new universal service rules which require Pacific Bell, the state's largest local exchange carrier, to fund internally a substantial portion of the cost of providing basic service for millions of residential consumers. CPUC Decision 96-10-066.

If this Commission likewise adopts an unrealistic funding level, the consequences will be extremely serious for consumers in high cost areas. In high cost areas, there will be no economic incentive for competitive local carriers to build new facilities to compete with incumbent carriers. Nor will there be any economic incentive for incumbent carriers to modernize their networks to provide quality service. In addition, incumbent carriers will be under increased financial pressure to charge consumers higher rates for basic service, provide inferior service, and ultimately petition to be relieved of their obligations as carriers of last resort.

In short, there would be two Americas when it comes to telecommunications services. One America would enjoy state-of-the-art services offered by a number of providers at highly competitive rates. The other America would be served with increasingly obsolete technology by a single monopoly provider charging significantly higher rates.³

II. Promoting Access by Consumers With Disabilities.

Citing section 255, the Joint Board acknowledged that "Congress intended that individuals with disabilities have access to telecommunications services." Para. 24. Nonetheless, it concluded that access to telecommunications services and equipment by individuals with disabilities "need not be addressed by this Joint Board because they will be addressed in a separate proceeding to implement section 255." Para. 392.

The Commission should reject the Joint Board's recommendation to exclude

³ These results would be contrary to section 254 (b)(1) ("Quality services should be available at just, reasonable, and affordable rates."), section 254(b)(2) ("Access to advanced telecommunications and information services should be provided in all regions of the Nation.") and section 254(b)(3) ("Consumers in all parts of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange service and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonable comparable to rates charged for similar services in urban areas.") .

consideration of disability-related issues. Instead, within the context of section 254, the Commission should be seeking specific ways to further Congress's intent that all persons (including those with disabilities) have access to basic and advanced services.

In particular, the Commission should provide universal service support to help make specialized customer premises equipment such as TTYs, telephone signaling devices, telebraile machines and volume control telephones accessible and affordable to consumers with disabilities *in all states*.⁴ Because of the length of time it takes to make TTY and relay service calls, the Commission should provide universal service support for toll charges associated with such use. Finally, the Commission should provide universal service support for specialized equipment and additional services when needed by schools and libraries to serve children with disabilities. For example, schools for deaf and hearing-impaired students will have special usage and service needs to accommodate those disabilities. (They, for instance, will require greater usage when accessing service or greater bandwidth to accommodate signing.) In light of Congress's intent to promote access by persons with disabilities, the Commission should ensure that the discounts address these

⁴ The National Association of the Deaf has stated that while a few states have limited distribution programs for specialized equipment, more than half the states do not have any equipment distribution program at all.

needs and such schools receive high priority in receiving discounts under section 254. The Commission should adopt similar measures for libraries which provide special telecommunications-related services for children with disabilities.

Contrary to the Joint Board's recommendation, *none of these issues will be addressed in the section 255 proceeding*. At this time, the section 255 proceeding is narrowly focussed on making telecommunications equipment usable by consumers with disabilities. It does not address making specialized equipment available and affordable, ensuring that unavoidably high toll usage is not a barrier to access, or ensuring that schools and libraries can afford the equipment and services needed to serve children with disabilities. These are all measures which the Commission must take *within the context of section 254* to promote access to basic and advanced services by consumers with disabilities.

III. Encouraging Deployment of Advanced Telecommunications Capability to All Americans.

The Joint Board put on similar blinders when addressing section 706 of the Telecommunications Act. Section 706 provides:

"The Commission and each State commission with regulatory jurisdiction over telecommunications services

shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.”

It further defines “advanced telecommunications capability” as “high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.”

In its *Recommended Decision*, the Joint Board recognized that while sections 706 and 254 are not substitutes for one another, these sections “complement” and “reinforce” each other by sharing a common goal of widespread availability of advanced telecommunications services. Yet, the Joint Board states “[W]e will not consider section 706 in the context of the section 254 rulemaking proceeding.”

Para. 619.

Sections 706 and 254 should *not* be rigidly compartmentalized in this fashion. After all, these sections are part of the same legislation, cover closely related subjects and seek to achieve a common goal--ensuring that *all* Americans have

access to affordable basic and advanced services in a competitive environment.

Consequently, in developing new rules for universal service, the Commission should look to the values expressed in section 706 for guidance and act with the knowledge that Congress has mandated that the Commission adopt measures *beyond* discounts for schools, libraries and health care providers to achieve this goal. Accordingly, implementing section 706 may well require additional funding and establishing additional guidelines for states to follow to meet their obligation to encourage the deployment of advanced telecommunications capability to all Americans.

IV. Promoting Access by Schools and Libraries.

We support the Joint Board's recommendation that schools and libraries receive discounts of between 20 and 90 percent on all telecommunications services, Internet access and internal connections up to an annual cap of \$2.25 billion. In particular, we are pleased to see the Joint Board is recommending that schools and libraries in economically disadvantaged and high cost areas receive the larger discounts.

We urge the Commission to build upon the Joint Board's recommendations in one important respect. The Commission should encourage schools and libraries to involve the broader community in this process. Schools and libraries should have

some means of consulting the community before deciding which supported services to deploy

More importantly, the Commission should encourage these institutions to develop innovative ways of using the supported services to bridge the gap which often separates the school or library from its surrounding community. For example, in addition to Internet research and E-Mail oriented towards students and teachers, couldn't the same supported services be deployed to allow for greater communication between working parents and classroom teachers, for homework assistance and other ways which would bring the school and home environments closer together?

To encourage such efforts, the Commission should require that schools and libraries (1) have a mechanism for involving the broader community in planning which supported services to purchase and (2) deploy those services in ways which integrate the broader community. The Joint Board states that "[I]t would not be unduly burdensome to expect schools and libraries to certify that they have "done their homework" in terms of adopting a plan for securing access to all of the necessary supporting technologies needed to use the services purchased under section 254(h) effectively." Para. 601 at p. 309. As part of this "homework," schools and libraries should be required to consult with community representatives

(a community advisory committee, for example) as part of the planning process.

Alternatively, the Commission should create incentives to encourage these results.

These incentives could include setting aside a small portion of the fund for projects which emphasize community involvement, larger discounts, a higher priority on reaching the trigger, and/or expedited processing for such projects.

Encouraging community involvement as described above is one way that, *within the context of section 254*, the Commission could “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms)” as required by section 706. Broader community involvement as described above would also further the principle that “Access to advanced telecommunications and information services should be provided in all regions of the country.” Section 254(b)(2)

We also call the Commission’s attention to the fact that, acting pursuant to state legislation, the California Public Utilities Commission has established a \$50 million California Teleconnect Fund to provide discounts to *community based organizations* as well as schools, libraries and health care providers. In so doing, the CPUC stated:

“The California Teleconnect Fund also reduces the dichotomy between the information rich and the information poor. ... By providing qualifying CBOs with discounts for high speed data connections, these CBOs can better serve their constituencies, and provide the communities they serve with increased access to the telecommunications network, thereby decreasing the stratification between information rich and information poor communities.”

D. 96-10-066 at pp. 90-91. USA believes that discounts to community based organizations are crucial to ensure that *all* communities (including low income communities) have access to advanced telecommunications services and therefore such discounts should be provided for at both the federal and state levels.⁵

The Commission should keep in mind that the discounts for schools, libraries and health care providers (however generous) will not offset the substantial harm that would be caused by underfunding the cost of providing service in high cost areas. Underfunding high cost areas will mean that even if such discounts are available, many schools, libraries and health care providers will not have access to competitive, state-of-the-art services due to lack of infrastructure investment in these areas. Rather than unleashing the potential of telecommunications to serve

⁵ **If this Commission declines to extend discounts to community based organizations, it should make clear that states like California may provide for such discounts as long as such they are funded in a manner which is “specific, predictable and sufficient” and on an “equitable and non-discriminatory basis.” Section 254(f).**

these communities, the Commission would stifle such potential by adopting an unrealistic level of funding for universal service.

V. Promoting Access by Low Income Consumers.

We support the Joint Board's recommendations to promote access by low income consumers. In particular, we agree that:

- (1) Low income consumers should have access to the same services designated for support in rural, insular and high cost areas.
- (2) The Lifeline Assistance Program should provide voluntary toll blocking and toll control free-of-charge to eligible low income consumers.
- (3) Carriers should be prohibited from disconnecting Lifeline service for non-payment of toll calls.
- (4) Carriers should be prohibited from requiring security deposits from Lifeline customers who voluntarily agree to toll blocking.
- (5) States should be prohibited from restricting the number of service connections per year for which low income consumers who relocate can receive Link-Up support.

We further support the Joint Board's recommendation that the Lifeline program should be modified to ensure that low income consumers in *all* states are eligible to receive at least some federal support. We further agree that Lifeline, Link-up and corresponding state programs should be restructured so that *all*

telecommunications carriers contribute to and receive support from these programs on a competitively neutral basis.

The Commission should ensure that states continue to have the discretion to use either self-certification or income verification in determining customer eligibility. In California, self-certification has proven to be a highly cost effective procedure which has minimized cheating without unduly discouraging eligible consumers from obtaining lifeline service.⁶ In addition, the procedure is well understood and has gained wide acceptance in this state. Under these circumstances, the Commission should make clear that states may elect to use self-certification instead of income verification.

VI. Recovery of Carrier Contributions.

While the Joint Board devotes substantial attention to the method by which carriers should pay into the universal service fund, the Joint Board does not recommend a method by which carriers are to recover the cost of contributing to the

⁶ In 1993, a SRI International study commissioned by the CPUC found that the rate of ineligibility in California's lifeline program was "quite low" and concluded that "All in all, the study suggests that ULTS is doing quite a good job serving eligible households and that few ineligible households are included in this process." *A Study to Assess Customer Eligibility and Recommend Outreach Activities for the Universal Lifeline Telephone Service*, SRI International, November 1993, p. ES-2. Accordingly, the SRI International researchers did not recommend use of income verification in lieu of self-certification.

fund.⁷ The Commission must provide a “specific, predictable and sufficient” means for carriers to recover such costs.

If the Commission fails to provide such a means, carriers will have to fund the cost of supporting universal service through implicit subsidies which are not a reliable source of funding in a competitive environment. As Commissioner Ness states

“Congress told us to “thoroughly review the existing system of Federal universal service support.” We have done what Congress directed and determined that *our current system of universal service is not sustainable*. It relies on billions of dollars (no one can say how many) of implicit subsidies. Access charges, vertical services and business lines, for example, are all priced well in excess of cost, and some of the excess helps to keep local phone rates low. Competitors, naturally, will target the high-margin services, and *these sources of subsidies will inevitably diminish over time*.”

Separate Statement of Commissioner Ness at p. 1 (*emphasis added*). See also Separate Statement of Rachelle B. Chong, Concurring in Part, Dissenting in Part, at p. 1 (*emphasis added*) (“One of the key tasks of this Joint Board is to identify all implicit universal service subsidies and to *either remove them or make them*

⁷ On this important point, the Joint Board rejects several methods suggested by commenters but fails to offer any recommendation of its own.

explicit.”) By requiring that carriers contribute into a new universal service fund but failing to provide a specific means for carriers to recover their contributions to the fund, the Joint Board simply poured the old wine of implicit subsidies into a new bottle.

Failing to provide a specific means for carriers to recover would also make it far more difficult for carriers to make the infrastructure investments needed to modernize their networks and bring advanced telecommunications services to high cost areas. In that event, the entire community (including the very consumers and institutions the Commission are seeking to benefit) would be worse off.⁸

Conclusion

For the reasons set forth above, USA requests that the Commission:

- (1) Establish a realistic funding level to support high cost areas;
- (2) Provide a reasonable transition period for all carriers to adjust to “least-cost, most efficient” standard in the proxy cost model;

⁸ This would frustrate rather than further section 254(b)(2) (“Access to *advanced telecommunications and information services* should be provided in all regions of the Nation.”) and section 254(b)(3) (“Consumers in all regions of the nation, including low-income consumers, and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and *advanced telecommunications and information services*, that are reasonably comparable to those services provided in urban areas....”).

(3) Provide universal service support

(a) for distribution of specialized customer premises equipment;

(b) to mitigate the cost of unavoidably high toll usage associated with TTY and relay service and

(c) to ensure that special equipment, services and usage needed by schools and libraries to serve disabled children are affordable and these needs are given priority under the section 254 discount program.

(4) Consider section 706 in developing rules for universal service;


(5) Encourage schools and libraries to involve the broader community in planning and deploying services under the discount program;

(6) Clarify that states may elect to use either self-certification or income verification in determining the eligibility for Lifeline, Linkup and other low income programs and

(7) Provide a reliable mechanism by which carriers may recover the cost of contributing to the new universal service fund.

Date: December 18, 1996

Respectfully submitted,

By 
Jacquelyn Brand

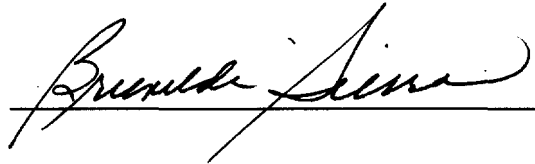
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Certificate of Service

Case: In the Matter of Federal State Joint Board on Universal Service (CC Docket No. 96-45).

I, BRUNILDA SIERRA hereby certify that I have upon this day served a copy of the attached Comments of Universal Service Alliance on Recommended Decision by the Federal State Joint Board by mailing a copy via first class mail upon all persons and entities on the service list for the above proceeding. A list of the names and of the persons and entities served is attached to the original certificate filed with the Commission.

Dated at San Francisco, California on December 18, 1996.

A handwritten signature in cursive script, reading "Brunilda Sierra", is written over a horizontal line.

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CC Docket No. 96-45**

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